

## CONGRESSIONAL RECORD SUMMARY

Monday, July 7, 2003

### SENATE

#### H.R. 1 - Medicare Prescription Drug and Modernization Act:

*Pursuant to the order of June 26, 2003, Senate passed H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary prescription drug benefit under the Medicare program and to strengthen and improve the Medicare program, after striking all after the enacting clause and inserting in lieu thereof, the text of S. 1, Senate companion measure, after agreeing to the following amendment proposed thereto:*

*Pages S 8898-S 8997, D 762*

*"...SEC. 636. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE OF NURSING FACILITY RESIDENTS*

*(8)(A) Background checks of provisional employees...*

*(D)(ii) Immunity from Liability...*

*(D)(iii) Criminal Penalty..."*

*Pages S 8888-91*

*Frist Amendment No. 1134, to amend the title of the bill.*

*Pages S 8898, D 762*

*Senate insisted on its amendments, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Grassley, Hatch, Nickles, Frist, Kyl, Baucus, Rockefeller, Daschle, and Breaux.*

*Pages S 8898, D 762*

*Subsequently, the June 26, 2003, passage of S. 1 was vitiated and the bill was then returned to the Senate calendar.*

*Pages S 8997, D 762*

#### S. 11 - Patients First Act:

*Senate began consideration of the motion to proceed to consideration of S. 11, to protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs.*

*Pages S 8871-93, S 8893- 94, D 762*

*"...First and foremost, the Patients First Act allows patients to recover 100 percent of their economic damages. This can include hospital bills, lost wages, therapy, and rehabilitation costs and a wide variety of additional expenses a victim might incur. So all of the economic losses would be recovered. In addition to recovering every dime of economic damages, patients can receive additional sums up to \$250,000 to compensate for 'pain and suffering.' The \$250,000 is a substantial amount of money, identical to California's MICRA limit. But it still places at least some limit on unquantifiable noneconomic damages in order to prevent doctors from being driven out of business. Let's look at punitive damages. In those rare instances where a medical professional acts in a malicious or particularly egregious manner, the Patients First Act also allows victims to recover punitive damages the greater of \$250,000 or twice the economic damages. This is in addition to recovering full economic damages and up to \$250,000 in noneconomic damages. The legislation establishes a standard of 'fair share' liability. What this simply means is doctors and hospitals will not be held liable for harm they did not cause. Simple justice. Doctors and hospitals won't be held liable for harm they didn't cause which is possible today and would not be possible after the passage of this act. The Patients First Act also protects the injured by ensuring that a majority of any jury award or settlement goes to the patient who is actually hurt and not their personal injury lawyer. Finally, this legislation preserves State flexibility on damages by including what is commonly referred to as a flexicap..." (McConnell, page S 8874)*

#### **S. 11 - Patients First Act (Cont.):**

*"...Did you hear any part of that explanation in the introduction of S. 11? You didn't. It was all about lawyers filing claims. But there is another part of the story. The insurance companies are a part of the story. We are not supposed to talk about that on the floor of the U.S. Senate. Perhaps someone is entertaining a rule to prohibit reference to insurance companies. We just don't do that around here. That is not considered polite. But it is part of the problem, and it is also part of the solution. We need to deal with making certain that insurance companies treat doctors fairly--and reinsurance companies. Now, this gets into the complexity of insurance policy, which I may not understand as well as I should, but I do know this part: There are five reinsurance companies in the world that reinsure for medical malpractice. Only one of them, the Hartford, is regulated in the United States and subject to State regulation; the other four are not. We have no idea whether the rates they are charging are fair. So before we say to David and his family, \$250,000 and not a penny more, no matter how long you live, the obvious question is, Are the insurance companies dealing with this challenge and dealing with it fairly? Incidentally, the insurance companies are exempt from antitrust law. They can gather information and share that information without any penalty, through the Department of Justice, for violations of antitrust. ..." (Durbin, page S 8880)*

**A motion was entered to close further debate on the motion to proceed** and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on the cloture motion will occur on Wednesday, July 9, 2003.

*Pages S 8894, D 762*

**Senate will continue consideration of the motion to proceed** to consideration of the bill on Tuesday, July 8, 2003.

*Page D 762*

#### **Nomination Considered:**

*Senate began consideration of the nomination of Bruce E. Kasold, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims.*

*Pages S 8893, D 762*

#### **Nominations Received:**

**Senate received the following nominations:**

*Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California for the term of four years.*

*Pages S 8997-99, D 762*

#### **Submitted Resolutions:**

**S. Res. 192 - Resolved, That the Committee on the Judiciary is discharged from the further consideration of the nomination of David W. McKeague, of Michigan, to be a United States Circuit Judge for the Sixth Circuit.**

**S. Res. 193 - Resolved, That the Committee on the Judiciary is discharged from the further consideration of the nomination of Susan Bieke Neilson, of Michigan, to be a United States Circuit Judge for the Sixth Circuit.**

**S. Res. 194 - Resolved, That the Committee on the Judiciary is discharged from the further consideration of the nomination of Henry W. Saad, of Michigan, to be a United States Circuit Judge for the Sixth Circuit.**

**Submitted Resolutions (Cont.):**

**S. Res. 195 - Resolved, That the Committee on the Judiciary is discharged from the further consideration of the nomination of Richard A. Griffin, of Michigan, to be a United States Circuit Judge for the Sixth Circuit.**

Frist

Page S 8897

**Congressional Program Ahead - Week of July 8 through July 12, 2003:**

**Committee on Appropriations: 7/8/2003 @ 10:00 a.m.** Subcommittee on Defense, business meeting to mark up proposed legislation making appropriations for the Department of Defense for the fiscal year ending September 30, 2004. SD-192.

**Committee on Appropriations: 7/9/2003 @ 10:30 a.m.** Subcommittee on Homeland Security, business meeting to mark up proposed legislation making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2004. SD-124.

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**Committee on the Judiciary: 7/8/2003 @ 2:30 p.m.** To hold hearings to examine the nominations of Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security, and Jack Landman Goldsmith III, of Virginia, to be an Assistant Attorney General, Department of Justice. SD-226.

**Committee on the Judiciary: 7/9/2003 @ 9:30 a.m. Full Committee, to hold hearings to examine the nominations of James O. Browning, to be United States District Judge for the District of New Mexico, Kathleen Cardone, to be United States District Judge for the Western District of Texas, James I. Cohn, to be United States District Judge for the Southern District of Florida, Frank Montalvo, to be United States District Judge for the Western District of Texas, Xavier Rodriguez, to be United States District Judge for the Western District of Texas, and Rene Acosta, of Virginia, to be an Assistant Attorney General, Department of Justice. SD-226.**

**Committee on the Judiciary: 7/10/2003 @ 9:30 a.m. Full Committee, business meeting to consider pending calendar business. SD-G 50.**

**Committee on Rules and Administration: 7/9/2003 @ 9:30 a.m. To hold hearings to examine S. Res. 173, to amend Rule XVI of the Standing Rules of the Senate with respect to new or general legislation and unauthorized appropriations in general appropriations bills and amendments thereto, and new or general legislation, unauthorized appropriations, new matter, or nongermane matter in conference reports on appropriations Acts, and unauthorized appropriations in amendments between the Houses relating to such Acts. SR- 301.**

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**Remarks:**

Medical Liability Reform.

Lott

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Judicial Nominations.

Lott

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## HOUSE

### Reports Filed:

#### **Reports were filed as follows:**

Filed on June 30, **H.R. 1950, to authorize appropriations for the Department of State** for the fiscal years 2004 and 2005, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2004 and 2005, amended (**H. Rept. 108-105 Pt. 3**);

Filed on **July 1, H.R. 2657, making appropriations for the Legislative Branch** for the fiscal year ending September 30, 2004 (**H.Rept. 108-186**); and

Filed on July 2, **H.R. 2658, making appropriations for the Department of Defense** for the fiscal year ending September 30, 2004 (**H. Rept. 108- 187**).

*Page H 6271, D 763*

### Executive Communications:

**EC - 2937.** *A letter from the Secretary, Judicial Conference of the United States, transmitting a proposed emergency supplemental appropriations request totaling \$32.2 million for fiscal year 2003 to fund non-recurring expenses associated with new Article III judgeships and to pay for higher than anticipated Criminal Justice Act representations and juror days; to the Committee on Appropriations.*<sup>1</sup>

*Page H 6268*

**EC - 2958.** *A letter from the Senior Staff Attorney, Court of Appeals For the First Circuit, transmitting the opinion from Sunday Dixon Orekoya v. James Mooney, No. 02-1306 (1st Cir. May 15, 2003); to the Committee on Government Reform.*

**EC - 2968.** A letter from the Assistant Secretary, Department of Labor, transmitting the Department's final rule--*Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (RIN: 1218-AC10)* received June 6, 2003, pursuant to 5 U.S.C. 801; to the Committee on the Judiciary.

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### Congressional Program Ahead - Week of July 8 through July 12, 2003:

**Committee on Government Reform:** 7/8/2003 @ 10:00 a.m. Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census, hearing entitled "*Federal Electronic Records Management: What is the Plan? What is our Progress?*" 2154 Rayburn.

**Committee on Government Reform:** 7/9/2003 @ 2:00 p.m. Subcommittee on Civil Service and Agency Organization, hearing entitled "*Making Health Care More Affordable: Extending Premium Conversion to Federal Retirees.*" 2247 Rayburn.

**Committee on the Judiciary:** 7/8/2003 @ 2:00 p.m. Subcommittee on the Constitution, hearing on **H.R. 1997, Unborn Victims of Violence Act of 2003 or Laci and Conner's Law.** 2141 Rayburn.

**Committee on the Judiciary:** 7/8/2003 @ 10:00 a.m. Subcommittee on Crime, Terrorism, and Homeland Security, hearing on **H.R. 2214, Reduction in Distribution of Spam Act of 2003.** 2141 Rayburn.

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<sup>1</sup>Please note that in the published Congressional Record (July 7, 2003), there was a typographical error omitting "Secretary, Judicial Conference of the United States." The Government Printing Office (GPO) has been contacted regarding this error.

**Congressional Program Ahead - Week of July 8 through July 12, 2003 (Cont.):**

**Committee on the Judiciary:** 7/9/2003 @ 10:00 a.m. **Full Committee, to mark up the following: H.R. 1707, *Prison Rape Reduction Act of 2003*; H.R. 1561, *United States Patent and Trademark Fee Modernization Act of 2003*; H.R. 2086, *Office of National Drug Control Policy Reauthorization Act of 2003*.** 2141 Rayburn.

**Committee on the Judiciary:** 7/10/2003 @ 3:00 p.m. Subcommittee on Crime, Terrorism, and Homeland Security, oversight hearing on "*Terrorism and War-Time Hoaxes.*" 2141 Rayburn.

**Committee on Rules:** 7/8/2003 @ 4:30 p.m. To consider the following: **H.R. 2657, *making appropriations for the Legislative Branch for the fiscal year ending September 30, 2004*.** H-313 Capitol.  
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**Select Committee on Homeland Security:** 7/9/2003 @ 10:00 a.m. Subcommittee on Intelligence and Counterterrorism, hearing entitled "*DHS Responsibility for Threat Warnings and Analysis: How Well is the Department Serving its Customers?*" Room to be announced.  
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**Next SENATE MEETING: 9:30 a.m., Tuesday, July 8, 2003.**

**Next HOUSE MEETING: 10:30 a.m., Tuesday, July 8, 2003.**

**OLA: A. Getter-Santos**